

INTERGOVERNMENTAL AGREEMENT
between
LAKE COUNTY STORMWATER MANAGEMENT COMMISSION
and the
FREMONT TOWNSHIP HIGHWAY DEPARTMENT, ILLINOIS

FEMA FY22 Pre-Disaster Mitigation Program, Sylvan Lake Dam Modification Project

THIS AGREEMENT (“AGREEMENT”) is made between the Lake County Stormwater Management Commission (“SMC”), acting pursuant to a cooperative agreement with the State of Illinois, Illinois Emergency Management Agency (referred to herein as “IEMA”, the “Grantor,” and “STATE”), and Fremont Township Highway Department, Illinois (“TOWNSHIP”).

RECITALS

WHEREAS, the SMC and the TOWNSHIP are legal entities under the laws of the State of Illinois, having among their powers to contract with one another to perform the undertakings described in this AGREEMENT; and

WHEREAS, the SMC has entered into a cooperative agreement with the STATE dated September 20, 2022 in which the SMC to undertake the engineering, design, and reconstruction of the existing Sylvan Lake Dam and its appurtenances, and the relocation of an above ground sanitary sewer located at the crest of the Sylvan Lake Dam; and,

NOW THEREFORE, for and in consideration of the benefits to be derived from the implementation of the Lake County Pre-Disaster Mitigation Project, the sufficiency of which is hereby acknowledged, the parties agree to the following terms and conditions:

ARTICLE 1
AWARD AND PROJECT INFORMATION

- 1. Project Nature and Scope.** This agreement is for the Sylvan Lake Dam Modification Project (“PROJECT”) and is made under and in accordance with FEMA’s Hazard Mitigation Assistance Program, which is authorized by the Section 404 of the Stafford Act, 42 U.S.C., to fund hazard mitigation projects to ensure that the opportunity to take critical mitigation measures to reduce the risk of loss of life and property from future disasters is not lost during the reconstruction process following a disaster.

The PROJECT scope is described in Attachment A and generally includes but is not limited to the engineering, design, and reconstruction of the existing dam and its appurtenances, and the relocation of an above ground sanitary sewer located at the crest of the Sylvan Lake Dam. Removal of vegetation, relocation of utilities, removal of box culvert and chute spillway, installation of drop structure with gate valve, installation of dewatering pipe and valves, installation of rip-rap and sheet piling, removal and replacement of guard rail and pavement, and restoration of disturbed areas. The reconstruction of the dam and appurtenances will reduce the risks associated with a dam failure which include damage to personal property, public infrastructure, risk for injury, and loss of life.

- 2. Federal Funding.** IEMA, a grantee of the FEMA Pre-Disaster Mitigation Grant Agreement EMC-2022-PD-0003, has granted to SMC as subrecipient, a grant for the project further described herein. The costs of the project

beyond those federal funds which are or shall be provided to SMC by IEMA with respect to the PROJECT, shall be paid by the local sponsor, the TOWNSHIP, which additional costs are anticipated to be 25 percent of the total project costs. The total estimated PROJECT costs include SMC's administrative expenses in managing the PROJECT, as well as other administration, design, engineering, permitting, bidding, mobilization, construction, site restoration, construction management, contingencies, and other categories of expense. All expenses must be incurred by or before December 31, 2025. SMC will pay contracts for eligible expenses, which payments will be submitted to IEMA for reimbursement. SMC and the TOWNSHIP acknowledge and agree that funding for this PROJECT is contingent upon the and subject to the availability of funds and reimbursement by IEMA for the federal funds portion of the PROJECT. To the extent expended funds are deemed by IEMA to be non-reimbursable, the TOWNSHIP shall be responsible for reimbursing SMC with respect to the same.

Federal funding is subject to availability and provision of federal funds, which shall not exceed \$1,293,424.80. The TOWNSHIP shall be responsible for any expense that exceeds such amount or that is otherwise deemed by IEMA to not be reimbursable.

- 3. Non-Federal Funding and Project Costs in Excess of Anticipated Costs.** The estimated non-federal funds required from the TOWNSHIP for the PROJECT are approximately \$2,136,038.96, which includes \$431,141.71 for the FEMA grant funded project work and approximately \$1,704,897.25 for the estimated additional project costs for construction. The TOWNSHIP is also required to pay for any other cost overruns or increases of the anticipated total PROJECT costs, which the TOWNSHIP shall pay to SMC. The TOWNSHIP shall pay to the SMC four equal installments of \$250,000 each for the required contribution of the non-federal funds and the estimated additional project costs for construction on September 30, 2024, December 31, 2024, June 30, 2024, and September 30, 2025, and the TOWNSHIP shall pay to the SMC the remaining balance for the additional project costs for construction (estimated to be \$1,136,038.96), less any in-kind contributions, as well as pay any additional expense incurred during implementation and completion of the PROJECT by December 31, 2025.

If this Agreement is terminated prior to completion of the PROJECT, such termination shall not reduce the payments due to SMC by the TOWNSHIP. In such an event, the TOWNSHIP shall remain obligated to pay SMC an amount sufficient to compensate the SMC for any time spent on the TOWNSHIP's behalf or otherwise administering the PROJECT prior to termination and to cover any and all expenses incurred deemed to be non-reimbursable or eligible project costs by IEMA or FEMA. The parties further agree that the payment schedule shall be adjusted commensurate with the construction schedule such that, if construction is significantly delayed from the anticipated schedule, the parties will agree to a new payment schedule as may be required by the delay.

- 4. Project Management.** SMC is the Project Manager for the PROJECT, and, on behalf of the TOWNSHIP, is the contract administrator for design, engineering, construction services, and public notice bid services for the PROJECT, and all such other actions or activities appropriate for SMC to engage in on behalf of the Township with respect to the PROJECT. The PROJECT costs incorporate an administrative fee paid to SMC for its services in administering and managing the PROJECT.

As Project Manager, SMC will solicit construction services through public bidding in compliance with state laws and regulations. If the lowest qualified bidder's proposal exceeds the amount budgeted for that item in the PROJECT Budget (Attachment A), the TOWNSHIP shall provide funds to SMC to cover the increased costs. If change orders for the work result in cost overruns, the TOWNSHIP shall provide funds to SMC to pay for such costs. SMC will work with the TOWNSHIP during PROJECT construction to manage construction budget and cost revisions to construction contract.

ARTICLE 2 TERM, CONDITIONS AND COMPLIANCE

1. **Term of Agreement.** This Agreement begins on **November 3, 2023** and extends through December 31, 2025 or completion of the PROJECT, whichever occurs first, however extensions up to one year can be requested subject to IEMA approval. Extensions must be requested at least 90-days prior to the termination of this Agreement. Under no circumstances can the project completion date be extended beyond September 20, 2025. Notwithstanding this section, the required non-federal funds payment deadline is not eligible for extension.
2. **Local regulatory compliance.** The PROJECT shall comply with the Lake County Watershed Development Ordinance (WDO) or local standards if more restrictive, and all regulations, laws, and statutes. SMC will obtain all necessary permits for the PROJECT. Work within public road rights-of-way shall not be performed without appropriate permits or authorization from the jurisdictional Road Authority.
3. **Grant Agreement and other regulatory compliance.** SMC, as a subrecipient to the grant, and the TOWNSHIP, agree to abide by all terms and conditions set forth by IEMA as enumerated in the Intergovernmental Grant Agreement between The State of Illinois, Illinois Emergency Management Agency and Lake County Stormwater Management Commission (“IEMA-SMC Grant Agreement”)(Attachment B hereto), and by FEMA and the Department of Homeland Security (DHS) as enumerated in the Pre-Disaster Mitigation Program Grant Agreement Articles AL #97.047 and included in Agreement EMC-2022-PD-003 (Attachment C hereto). SMC and TOWNSHIP shall also abide by all applicable determinations and directives contained in the Record of Environmental Consideration for the Sylvan Lake Dam Modification Project, Project LPDM-PJ-05-IL-2022-003(1) (Attachment D hereto).

The TOWNSHIP understands and agrees that its failure to comply with the foregoing may impact funding for the PROJECT. The TOWNSHIP agrees to reimburse the SMC or IEMA, as applicable, for any PROJECT costs expended that are deemed ineligible due to the TOWNSHIP’s failure to comply with the foregoing or any other part of this Agreement.

4. **Notification of applicable terms.** The SMC and TOWNSHIP shall advise any subcontractor or subgrantee of funds awarded through this Agreement of the requirements imposed on them by federal and state laws and regulations, and the provisions of the IEMA-SMC Grant Agreement. In all agreements between the TOWNSHIP and subcontractors or subgrantees, SMC requires that the TOWNSHIP adhere to the terms of the IEMA-SMC Grant Agreement.
5. **Landowner Agreements.** The PROJECT must be located on real property in which the TOWNSHIP has interest evidenced by valid title or easement, extending in perpetuity. All legally binding property arrangements must be obtained prior to the start of construction and should provide that the SMC Project Manager and all contractors, employees or agents of the SMC shall have the right to access the required property to do the PROJECT work. The SMC will assist the TOWNSHIP in obtaining and entering into appropriate legally binding arrangements to ensure that the land rights necessary for operation and maintenance procedures are possible in perpetuity. FEMA Pre-Disaster Mitigation funding shall not pay for any easements or deed or plat restrictions necessary to implement the PROJECT on property that is benefiting from the PROJECT.
6. **Operation and Maintenance.** The TOWNSHIP agrees that it is responsible for the long-term operation and maintenance of the PROJECT in perpetuity, which obligation shall survive the termination of this Agreement. The SMC Project Manager shall develop an Operation and Maintenance Plan (“O & M Plan”) to ensure the

long-term viability of the PROJECT and provide it to the TOWNSHIP for implementation. The O & M Plan shall be provided along with the PROJECT Final Report (as is provided for below) and shall include annual inspections and appropriate maintenance activities. The TOWNSHIP shall identify for the SMC Project Manager the financial resources for the implementation of the O & M Plan and such information will be incorporated into the O & M Plan. O & M Plan costs and any other costs TOWNSHIP incurs with respect to the PROJECT after the earlier of PROJECT completion or December 31, 2025, are not eligible for reimbursement.

7. **PROJECT Modification.** Modifications to the Project scope of work, if required, will be provided to TOWNSHIP by the SMC Project Manager and may require approval of FEMA/IEMA.
8. **PROJECT Coordination.** The SMC Project Manager shall provide PROJECT coordination including construction oversight and inspections and construction and contacts management and administration. The SMC Project Manager shall also provide progress briefings to the TOWNSHIP during the course of the PROJECT. SMC Project Manager shall prepare a quarterly report, or such other timeframe as may be required by IEMA, as well as prepare PROJECT Performance and Financial reports showing the progress of PROJECT implementation, as well as a financial summary for each Task/Phase of the PROJECT in accordance with the Project Schedule.
9. **PROJECT Final Report.** The SMC Project Manager shall provide a final report after completion of the project, which shall consist of the following: a location map; the approved as-built plan; Operations and Maintenance Plan; photographic documentation of pre-project, during construction and final conditions; copies of all required permits; and invoices and/or cost documentation for all PROJECT work including in-kind work and materials. Report requirements are subject to change based on guidance from FEMA/IEMA. The SMC Project Manager will use the FEMA/IEMA approved template for the final report.

ARTICLE 3

IEMA LOBBYING-RELATED REQUIREMENTS AND CERTIFICATIONS

1. **Lobbying Certification by Sub-awardees.** The TOWNSHIP and SMC shall cooperate to provide such certifications and disclosures as required by FEMA/IEMA. The TOWNSHIP agrees that pursuant to Appendix II(I) to 2 CFR Part 200, SMC shall forward all disclosures by contractors regarding this certification to IEMA.
2. **Improper Influence.** In circumstances where the TOWNSHIP expends or has influence over the expenditure of Grant Funds, the TOWNSHIP certifies that no Grant Funds have been paid or will be paid by or on behalf of it to any person for influencing or attempting to influence an officer or employee of any government agency, a member of Congress or Illinois General Assembly, an officer or employee of Congress or Illinois General Assembly, or an employee of a member of Congress or Illinois General Assembly in connection with the awarding of any agreement, the making of any grant, the making of any loan, the entering into of any cooperative agreement, or the extension, continuation, renewal, amendment or modification of any agreement, grant, loan or cooperative agreement. 31 USC 1352. Additionally, TOWNSHIP certifies that it has filed the required certification under the Byrd Anti-Lobbying Amendment (31 USC 1352), if applicable.
3. **Federal Form LLL.** If any funds, other than federally appropriated funds, were paid or will be paid to any person for influencing or attempting to influence any of the above persons in connection with this Agreement, the TOWNSHIP must also complete and submit Federal Form LLL, Disclosure of Lobbying Activities Form, in accordance with its instructions and submit a copy to the SMC.

4. **Lobbying Costs.** The TOWNSHIP certifies that it is in compliance with the restrictions on lobbying set forth in 2 CFR 200.450. For any Indirect Costs associated with this Agreement, total lobbying costs shall be separately identified in the Program Budget, and thereafter treated as other Unallowable Costs.
5. **Procurement Lobbying.** The TOWNSHIP warrants and certifies that it and, to the best of its knowledge, its sub-awardees have complied and will comply with Executive Order No. 1 (2007) (“EO 1-2007”). EO 1-2007 generally prohibits grantees, sub-awardees, and subcontractors from hiring the then-serving Governor’s family members to lobby procurement activities of the State, or any other unit of government in Illinois including local governments, if that procurement may result in a contract valued at over \$25,000. This prohibition also applies to hiring for that same purpose any former State employee who had procurement authority at any time during the one-year period preceding the procurement lobbying activity.
6. **Certification.** Certifications provided under and by this Agreement are material representations of fact upon which reliance was placed to enter into this Agreement and they are prerequisites for this Agreement, pursuant to 31 USC 1352. Any person who fails to file the required certifications shall be subject to a civil penalty of not less than \$10,000, and not more than \$100,000, for each such failure.

ARTICLE 4 RECORDS AND AUDIT

1. **Records Retention.** The SMC shall be primarily responsible for records maintenance and compliance requirements, and shall generally maintain said records for three (3) years from the date of submission of the final expenditure report for the PROJECT any documents it has related to the PROJECT, including books, all financial records, supporting documents, statistical records, and all other records pertinent to the PROJECT and this Grant Contribution, adequate to comply with 2 CFR 200.333, unless a longer retention period is specified in 2 CFR 200.333 or 44 Ill. Admin. Code §§ 7000.430(a) and (b). If any litigation, claim or audit is started before the expiration of the retention period, the records shall be retained until all litigation, claims or audit exceptions involving the records have been resolved and final action taken.
2. **Accessibility of Records.** The SMC and TOWNSHIP, in compliance with 2 CFR 200.337 and 44 Ill. Admin. Code 7000.430(e), shall make books, records, related papers, supporting documentation and personnel relevant to this Agreement or the PROJECT available to authorized IEMA representatives, the Illinois Auditor General, Illinois Attorney General, any Executive Inspector General, the Grantor’s Inspector General, federal authorities, any person identified in 2 CFR 200.337, SMC, and any other person as may be authorized by IEMA (including auditors), by the state of Illinois or by federal statute. The TOWNSHIP and SMC shall cooperate fully in any such audit or inquiry.
3. **Cooperation with Audits and Inquiries, Confidentiality.** The TOWNSHIP shall cooperate with SMC and IEMA and other legal authorities in any audit or inquiry related to the Grant or the PROJECT. The TOWNSHIP may be obligated to keep confidential any audit or inquiry and to limit internal disclosure of the audit or inquiry to those TOWNSHIP personnel who are necessary to support the TOWNSHIP’S response to the audit or inquiry. This confidentiality requirement shall not limit TOWNSHIP’S right to discuss an audit or inquiry with its legal counsel. If a third party seeks to require the TOWNSHIP, pursuant to any law, regulation, or legal process, to disclose an audit or inquiry that has been deemed confidential by the Grantor or other governmental authority, the TOWNSHIP shall promptly notify the entity that is conducting the audit or inquiry so that it may seek a protective order, take other appropriate action, or waive compliance by the TOWNSHIP with any confidentiality requirement.

ARTICLE 5 CERTIFICATION OF AGREEMENT TERMS

By its execution of this Agreement, TOWNSHIP certifies that (1) all representations made in this Agreement are true and correct and (2) all Grant Funds expended pursuant to this Agreement shall be used only for the purpose(s) described herein and in accordance with the terms of this Agreement and the IEMA-SMC Grant Agreement. The TOWNSHIP acknowledges that the Grant Contribution provided is made solely upon this certification and that any false statements, misrepresentations, or material omissions shall be the basis for immediate termination of this Agreement and repayment of all Grant Contribution funds received.

ARTICLE 6 TERMINATION

1. This Agreement may be terminated, in whole or in part, by SMC without notice, pursuant to: (1) funding failure from FEMA and/or IEMA; (2) TOWNSHIP'S failure to comply with terms and conditions of this Agreement or TOWNSHIP has made a false representation in connection with receipt of compensation; (3) TOWNSHIP'S breach of this Agreement or the IEMA-SMC Grant Agreement, and, if a cure period is allowed, failure to cure such breach, or commence cure of the breach, within 15 days of written notice thereof; and (4) IEMA terminating the State-Local Grant Agreement awarding funds for the PROJECT.
2. The termination of the Agreement in part shall not eliminate the amount of contribution funds the TOWNSHIP shall pay to SMC. In the event of termination of the Agreement in whole, the TOWNSHIP'S contribution will be reduced to an amount sufficient to compensate SMC for any costs incurred and time spent administering the PROJECT or prior to termination as is provided for in Article 1, Section 3 of this Agreement.

ARTICLE 7 INDEPENDENT CONTRACTOR AND INDEMNIFICATION

1. **Independent Contractor.** The TOWNSHIP is an independent contractor under this Agreement and neither the TOWNSHIP nor any employee or agent of the TOWNSHIP is an employee of IEMA or SMC and do not acquire any employment rights with IEMA or SMC or the state of Illinois by virtue of this Agreement or receipt of FEMA or IEMA Grant funds.
2. **Indemnification.** To the extent permitted by law, the TOWNSHIP agrees to hold harmless SMC against any and all liability, loss, damage, cost or expenses, including attorney's fees, arising from intentional torts, negligence or breach of contract of the TOWNSHIP, with the exception of acts performed in accordance with an explicit, written directive of SMC.

ARTICLE 7 MISCELLANEOUS

1. **Exhibits and Attachments.** All attachments and exhibits referenced herein and attached hereto are incorporated herein in their entirety.
2. **Publicity and Notification.** Grant funds shall not be used for promotions, advertising or publicity purposes. Any press releases, printed notices, publications and the like shall include the following language: "Original

funding provided in whole or in part from the Federal Emergency Management Agency through the Illinois Emergency Management Agency.” The TOWNSHIP will notify SMC at least twenty-one (21) days prior to issuing any public notice or press release concerning the PROJECT or work performed under this Agreement.

3. **Domestic Preference for Procurements.** In accordance with the IEMA-SMC Grant Agreement and with 2 CFR 200.322, as appropriate and to the extent consistent with law, the TOWNSHIP should, to the greatest extent practicable under this Agreement, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products). The requirements of this paragraph must be included in all subawards and in all contracts and purchase orders for work or products under this Agreement and the DCEO Award.
4. **Notices.** All notices required or permitted hereunder shall be in writing, and delivered either personally or by certified or registered mail, return receipt requested, to the following addresses or sent by electronic mail (“e-mail”) to the following contact addresses:

If to TOWNSHIP, contact:

Alicia Dodd, Highway Commissioner
Fremont Township
22376 W. Erhart Road
Mundelein, IL 60060
Phone: (847) 223-2848
email: highway@fremonttownship.com

If to SMC, contact:

Sharon Østerby, Water Resource Professional
Lake County Stormwater Management Commission
500 W. Winchester Road
Libertyville, IL 60048
Phone: 847-377-7700
email: sosterby@lakecountyil.gov

5. **Assignment Prohibited.** The TOWNSHIP acknowledges that this Agreement or its responsibilities hereunder may not be sold, assigned, or transferred in any manner by the TOWNSHIP, and that any actual or attempted assignment or transfer by the TOWNSHIP without the prior approval of SMC in writing shall render this Agreement null, void and of no further effect.
6. **Delegation.** The TOWNSHIP may not delegate any of its duties under this Agreement without Prior Approval of SMC and, if necessary, IEMA.
7. **Amendments.** This Agreement may be modified or amended during its Term by mutual agreement of the Parties as expressed in writing and signed by the Parties.
8. **Severability.** If any provision of the Agreement is declared invalid, its other provisions shall not be affected thereby.
9. **Applicable Law; Claims.** This Agreement and all subsequent amendments thereto, if any, shall be governed and construed in accordance with the laws of the state of Illinois. Any claim against SMC arising out of this Agreement must be filed exclusively with the Nineteenth Judicial Circuit Court of Illinois.

- 10. **Headings.** Article and other headings contained in this Agreement are for reference purposes only and are not intended to define or limit the scope, extent or intent of this Agreement or any provision hereof.
- 11. **Entire Agreement.** SMC and the TOWNSHIP acknowledge that this Agreement, including its Exhibits and Attachments, constitutes the entire agreement between them and that no promises, terms, or conditions not recited, incorporated, or referenced herein, including prior agreements or oral discussions, shall be binding upon either SMC or the TOWNSHIP.
- 12. **Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be considered to be one and the same agreement, binding on all Parties hereto, notwithstanding that all Parties are not signatories to the same counterpart. Duplicated signatures, signatures transmitted via facsimile, or signatures contained in a Portable Document Format (PDF) document shall be deemed original for all purposes.

IN WITNESS WHEREOF the parties, by their duly authorized officers, have executed this AGREEMENT, effective the date approved and executed by the Chair of the SMC.

FREMONT TOWNSHIP HIGHWAY DEPARTMENT

LAKE COUNTY STORMWATER MANAGEMENT
COMMISSION



Highway Commissioner

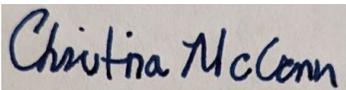
Chair

Date: 1 April 2024

Date: _____

ATTEST:

ATTEST:



Township Clerk

Executive Director

Attachment A

Project Scope & Budget

Attachment B

IEMA-SMC Grant Agreement

Attachment C

FY22

Pre-Disaster Mitigation Program Grant Agreement Articles

AL #097-047

Attachment D

Project Conditions for Compliance with the National Historic Preservation Act